

**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: CC46/2025
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: YES
DATE **25 March 2026**
SIGNATURE

In the matter between:

THE STATE

and

T[...] M[...]

Accused

SENTENCE

MORE, AJ:

[1] Judgment of sentence. The accused, T[...] M[...], is a 36-year-old female born on 13 April 1990 in Zimbabwe. She has a teaching diploma from a teaching school in Zimbabwe. She was married to the deceased. They stayed together in a rented room with their son. The accused was legally represented and found guilty of murder in terms of Section 51(1), read with Part 1 of Schedule 2 of the Criminal Law Amendment Act (Act).¹

[2] On or about 11 November 2023, she murdered a male person, O[...] M[...], at or near 7[...] M[...] Street in the district of Actionville.

[3] The state submitted that the provisions of Section 51 of the Act are

¹ 105 of 1997.

applicable in that the accused was in a domestic relationship with the victim, and the death of the victim resulted from physical abuse as provided for in Part 1 of Schedule 2 of the Act, as amended by the Criminal and Related Matters Amendment Act.²

[4] Under count two, the accused was found guilty of mutilation of a human body. The accused and the deceased have a son together who was 18 months old at the time of the incident. The accused has another child, a 12-year-old boy who stays with her mother back home in Zimbabwe. She also has a sister in Zimbabwe.

[5] The accused has been in custody since 11 November 2023.

[6] According to the accused, their relationship started with love and deteriorated quickly due to jealousy, and ultimately resulted in the killing of the deceased. The stage of sentencing is regarded as one of the most difficult tasks that a Presiding Officer in any criminal matter has to deal with. It has been described as a painful, difficult problem and involves a careful and dispassionate consideration of all the factors.

[7] In *State v SMM*,³ the Court explained the applicable principle as follows:

“It is equally important to remind ourselves that sentencing should always be considered and passed dispassionately, objectively, and upon a careful consideration of all relevant factors. Public sentiments cannot be ignored, but it can never be permitted to displace the careful judgment and fine balancing that are involved in arriving at an appropriate sentence. Courts must therefore always strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, has regard to the nature of the crime, and takes account of the interest of society. Sentencing involves a very high degree of responsibility which should be carried out with equanimity.”

[8] When in the process of considering the appropriate sentence, all relevant factors need to be taken into account. The Court is required to take into account the four objectives of punishment: Deterrence, Prevention, Rehabilitation, and

² 12 of 2021.

³ 2013 (2) SACR 292 (SCA) at para 13.

Retribution.

[9] It was stated in *State v Swart*,⁴ that:

“Retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be accorded to each according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively small role.”

[10] In *State v Kruger*,⁵ Shongwe JA, with Harms AP and Plasket AJA concurring, confirmed that “punishing a convicted person should not be likened to taking revenge. It must have all the elements and purposes of punishment, prevention, retribution, individual and general deterrence and rehabilitation.”

[11] The offence for which the accused has been convicted attracts the minimum sentence of life imprisonment by virtue of the fact that the murder arose out of the domestic relationship between the accused and the deceased. The Court is obligated to impose the prescribed minimum sentence of imprisonment for life and would only deviate to impose such if substantial and compelling circumstances exist in terms of Section 51(3) of the Act.

[12] The foundation of sentencing, as set out in *State v Zinn*,⁶ is still relevant today. The Court is required to balance the three elements of sentencing, namely the crime, the offender, and the interest of society. These factors ensure that the Court takes into account the personal circumstances, character, conduct of life and personality, and everything that influences the circumstances of the offence by the accused, the nature and seriousness of the offence committed, and the interest of society, including the necessity for a level of uniformity in sentencing.

⁴ 2004 (2) SACR 370 (SCA) at para 12.

⁵ 2011 ZASCA 219; 2012 (1) SACR 369 (SCA) at para 11.

⁶ 1969 (2) SA 537 (A).

[13] On behalf of the accused, it was submitted that she showed remorse by checking the pulse of the deceased and handing herself over to the police. It is important to note that she did not do so immediately.

[14] The state stated that there are no substantial and compelling circumstances that can justify a lesser sentence, as this murder was brutal.

[15] Evidence shows that after being killed in the morning, the deceased's body was later mutilated at night. This behaviour on its own shows that the accused showed no remorse. Her post-murder behaviour should also be taken into account when one assesses whether or not she is remorseful.

[16] The accused has to take the Court into confidence and persuade it that she is genuinely remorseful. She did not come to Court and say, "I stabbed him several times and thereafter I cut him into pieces." This could have been taking the Court to show confidence and remorse.

[17] As stated in *State v Matyityi*, the Court held that:

"There is, moreover, a chasm between regret and remorse.⁸ Many accused persons might well regret their conduct but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question. It is to the surrounding actions of the accused rather than what he says in court that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those

actions.”⁷

[18] Judicial officers are enjoined to approach sentences with a humane and compassionate understanding of humane faculties.

[19] In *State v Rabi*,⁸ Corbett JA, as he then was, remarked as follows:

“A judicial officer should not approach punishment in a spirit of anger, because being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interest of society, which his tasks and the objects of punishment demand of him. Nor should he strive after severity, nor on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a human and compassionate understanding of human frailties and pressures of society which contribute to criminality.”

[20] It is in the context of this attitude of mind that I see mercy as an element in the determination of appropriate punishment in the light of all the circumstances of the particular case.

[21] The Court in *State v Malgas*,⁹ held that:

“The Court was not to be given a clean slate on which to inscribe whatever sentence it thought fit. Instead, it was required to approach that question conscious of the fact that the legislature has ordained life imprisonment, or the particular prescribed period of imprisonment, as the sentence which should ordinarily be imposed for the commission of the listed crimes in the specified circumstances.”

“In short, the legislature aimed at ensuring a severe, standardised, and consistent response from the Courts to the commission of such crimes unless there were, and could be seen to be, truly convincing reasons for a different response. When considering sentence, the emphasis was to be shifted to the

⁷ 2010 ZASCA 127; 2011 (1) SACR 40 (SCA); 2010 (2) All SA 424 (SCA) at para 13.

⁸ 1975 (4) SA 855 (A) at p866A-C.

⁹ 2001 (1) SACR 469 (SCA) at para 8.

objective gravity of the type of crime and the public's need for effective sanctions against it. But that did not mean that all other considerations were to be ignored. The residual discretion to decline to pass the sentence which the commission of such an offence would ordinarily attract plainly was given to the Courts in recognition of the easily foreseeable injustices which could result from obliging them to pass the specified sentences."¹⁰

"Secondly, a Court was required to spell out and enter on the record the circumstances which it considered justified a refusal to impose that specified sentence. As was observed in *Fenneri v Halifax Estate Agencies Ltd* by the Court of Appeal, a requirement to give reasons concentrates the mind. If it is fulfilled, the resulting decision is much more likely to be soundly based than if it is not. Moreover, those circumstances had to be substantial and compelling. Whatever nuances of meaning may lack in those words, the central thrust seems obvious: the specified sentences were not to be departed from lightly and for flimsy reasons which would not withstand scrutiny."¹¹

[22] Section 11 of the Constitution of South Africa gives everyone a right to life.

[23] In *State v Makwanyane*,¹² O'Regan J stated:

"The right to life was included in the Constitution not simply to enshrine the right to existence. It is not life as mere organic matter that the Constitution cherishes, but the right to human life, the right to live as a human being, to be part of the broader community, to share in the experience of humanity. This concept of human life is at the centre of our constitutional values. The Constitution seeks to establish a society where the individual value of each other of the community is recognised and treasured. The right to life is central to such a society."

[24] The accused not only deprived the young child of a father, but she also killed him in his presence, although the mother said she was asleep. The family of the deceased also suffered a great loss, and his other children too. Evidence on record is that the children are fed and taken care of. The evidence on record is also that

¹⁰ Above n 10 at para 8.

¹¹ Above n 10 at para 9.

¹² 1995 ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; 1996 (2) CHRLD 164; 1995 (2) SACR 1 183/25 at para 326.

before her arrest and even after her arrest, both children have been taken care of. She is no longer taking care of them on a daily basis. It is for this reason that she is no longer their primary caregiver.

[25] In *State v M*,¹³ it was stated that:

“sentencing officers cannot always protect children from these consequences. They can, however, pay appropriate attention to them and take reasonable steps to minimise the damage. The paramount policy, read with the right to family care, requires that the interests of children who stand to be affected receive due consideration. It does not necessitate overriding all other considerations. Rather, it calls for appropriate weight to be given in each case to a consideration to which the law attaches the highest value, namely, the interests of the children.”

[26] The deceased in this matter died a very painful, violent, slow, and brutal death. According to the doctor, the position of the stab wounds did not cause immediate death. He took hours before dying after the stab wounds were inflicted. The actions of the accused were callous, heartless, and cold. This shows how brutal and heartless the accused can be. The deceased, after the first stab wound, automatically became powerless, but the accused continued to stab him in that condition.

[27] In this country, gender-based violence is very prevalent. The statistics are growing every day. Every single day, there are reports of murders committed by intimate partners. Even though the Constitution gives everyone the right to life, no one in this country is safe. There is a duty expected from the Courts to protect victims and society.

[28] The legislature realised that crime was out of control in South Africa and passed the Minimum Sentences Act in 1997. The aim was to try to cap the spiralling offences mentioned in the Act. The community also expects the Court to pass sentences that should deter criminals, but it seems like the Act is failing to deter

¹³ 2007 ZACC 18; 2008 (3) SA 232 (CC); 2007 (12) BCLR 1312 (CC); 2007 (2) SACR 539 (CC) at para 42.

criminals.

[29] As stated in *State v Makatu*,¹⁴ “despite all these valiant efforts by government, we are not winning the war against these crimes.”

[30] In *Malgas*, the Court held that the prescribed minimum sentence must be imposed unless there are substantial and compelling circumstances that justify a lesser sentence.¹⁵ This framework was designed to ensure that serious offences are punished with the severity they warrant, while still allowing for judicial discretion in appropriate cases.

[31] The Court has to evaluate all aggravating and mitigating circumstances to decide whether substantial and compelling circumstances exist. In this matter, to justify the departure from the prescribed minimum sentence, the Court must be alive to the fact that the legislature has ordained a particular sentence for the offences committed by the accused.

[32] The question is whether the personal circumstances of the accused amount to substantial and compelling circumstances.

[33] It was held in *State v Vilakazi*,¹⁶ that:

“it is clear from the terms in which the test was framed in *Malgas* and endorsed in *Dodo* that it is incumbent upon a Court in every case, before it imposes a prescribed sentence, to assess upon a consideration of all the circumstances of the particular case whether the prescribed sentence is indeed proportionate to a particular offence. The Constitutional Court made it clear that what is meant by “the offence” in that context. And that is the sense in which I will use the term throughout this judgment unless the context indicates otherwise consists of all the factors relevant to the nature and seriousness of the criminal act itself, as well as all relevant personal and other circumstances relating to the offender which would have a bearing on the seriousness of the offence and the culpability

¹⁴ 2014 (2) SACR 539 (SCA) at para 31.

¹⁵ Above n 10 at para 34.

¹⁶ 2008 ZASCA 87; 2008 (4) All SA 396 (SCA); 2009 (1) SACR 552 (SCA); 2012 (6) SA 353 (SCA) at para 15.

of the offender.

If a Court is indeed satisfied that a lesser sentence is called for in a particular case, thus justifying a departure from the prescribed minimum sentence, then it hardly needs saying that the Court is bound to impose a lesser sentence. That was also made clear in *State vs Malgas*, which said that the relevant provisions of the Act vest the sentencing Court with the power, indeed the obligation, to consider whether the particular circumstances of the case require a different sentence to be imposed. And a different sentence must be imposed if the Court is satisfied that substantial and compelling circumstances exist which justify it.”

[34] The Court also takes into account the seriousness of the offences, although mercy should also be exercised. Given the high level of violent, insidious crimes in the country, as stated above, emphasis must be placed on retribution and deterrence. The accused, when she killed the deceased, did not show that she had any regard for human life. For her to be so heartless and callous towards her husband is scary.

[35] It is therefore the duty of the Courts to protect the citizens of this country and the society at large from the scourge of these violent crimes and to send a clear message that this behaviour is unacceptable and will not be tolerated. Society has a legitimate expectation that criminal activities, as displayed by the accused, should be punished. Both counsel addressed the Court in mitigation and aggravation of sentence. Substantial and compelling circumstances, in short, on behalf of the accused, were stated as follows: she does not have previous convictions, she is young, has minor children, and that she can still be rehabilitated. On the other hand, the state indicated that there are no substantial and compelling circumstances in that the murder has brutal elements and was committed in the morning, and the mutilation was done later in the evening. Her children are well taken care of by her mother back home in Zimbabwe. This crime was so violent that it warrants the maximum sentence.

[36] There was no protection order in place, save to say that there was a case number of a case which was reported at some point. The deceased had two other children back home in Zimbabwe, both a girl and a boy aged 18 and 19 years old.

They were still in secondary school and wished to go to Sake College. Now their father has violently been killed and taken away from them. The aggravating circumstances far outweigh the mitigating factors.

[37] According to the accused, the system failed her by not assisting her when she was abused by the deceased. The record indicates something different. The defence witness did her best to assist her. Again, the police went to her home at some point to arrest the deceased, but she chose to sign a withdrawal statement. Therefore, the blame cannot be placed on the failure of the justice system.

[38] Both the state and the Defence are in agreement that the accused and the deceased had a violent relationship marred by incidents of violence. The accused initially pleaded guilty on count two, mutilation of the body, but when she testified, she indicated that she does not remember what happened as she was too drunk that evening. Again, she did not take the Court into her confidence. At the end of her testimony, she asked for forgiveness, yet she was not completely honest. She did not take the time to pause and consider what she did, even though she had enough time to do so.

[39] After killing the deceased in the morning, she took the child to crèche. She then went to the doctor to have her hands stitched. She even went to a place which sells liquor to get some liquor. In fact, she had the whole day to realise that she did something wrong and had the opportunity to do the right thing by reporting it to the police even before mutilation. But she chose not to.

[40] In *State v Qamata*,¹⁷ the Court stated as follows:

“An appropriate sentence actually means a sentence in accordance with the blameworthiness of every individual offender. The punitive sanction should be proportionate in severity to the degree of blameworthiness or seriousness of the conduct.”

[41] In *Vilakazi*,¹⁸ Nugent JA said that in cases of serious crimes such as this, the

¹⁷ 1997 (1) SACR 477 (E) at 483.

personal circumstances of the offenders by themselves will necessarily recede into the background once it becomes clear that the crime is deserving of a substantial period of imprisonment.

[42] In line with *State v Matyityi*,¹⁹ the Supreme Court of Appeal emphasised that prescribed minimum sentences should not be departed from lightly or for flimsy reasons. Life imprisonment is the ultimate penalty that the Court can impose and should not be imposed lightly.

[43] Having considered all the relevant factors, submissions by counsel, and all applicable principles, the Court finds that there are no substantial and compelling circumstances to justify the application of a lesser sentence than the prescribed minimum sentence. I find that the manner in which the deceased was killed was brutal and shows disregard for human life in the presence of a baby.

[44] The Court looked at the accused's personal circumstances cumulatively and finds that there are no substantial and compelling circumstances to deviate from the prescribed minimum sentence of life imprisonment in count one, as aggravating circumstances far outweigh the mitigating circumstances.

[45] In the result, the Court finds as follows against the accused:

1. Count 1 (Murder): You are sentenced to life imprisonment.
2. Count 2 (Mutilation of a human body): You are sentenced to five years' imprisonment.
3. You are also declared unfit to possess a firearm in terms of section 103(1) of the Firearms Control Act 60 of 2000.

MORE

¹⁸ Above n 17 at para 58.

¹⁹ Above n 8 at para 18.

**ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

Date of Judgment :25 March 2026

Appearances:

For the State: Adv Jacobs

Instructed by: Director of Public Prosecutions

For the accused: Adv Zuze

Instructed by: Machingura Attorneys Inc



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